

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of

Redevelopment of Spectrum to  
 Encourage Innovation in the  
 Use of New Telecommunications  
 Technologies

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 ) ET Docket No. 92-9  
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 ) RM-7981  
 ) RM-8004  
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4/28/93  
 ET-13-13  
 Date Rec'd  
 4/28/93

**REPLY COMMENTS OF COX ENTERPRISES, INC.**

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its reply to comments filed in response to the Commission's First Report and Order and Third Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1/</sup>

In its comments on the Third Notice, Cox recommended that the Commission strike a more equitable balance between the needs of existing 2 GHz fixed microwave licensees and licensees of emerging technologies. It is Cox's proposal that the Commission reject the transition period concept and, instead, allow emerging technologies licensees to request existing 2 GHz licensees to voluntarily or involuntarily relocate within the twelve months following a relocation request.<sup>2/</sup> Furthermore, Cox proposes that emerging technologies

<sup>1/</sup> Emerging Technologies, 7 FCC Rcd 6886 (1992) ("Third Notice"). Cox limits its reply comments to the new issues raised in the Third Notice.

<sup>2/</sup> In its comments in this proceeding, Cox noted that, given the amount of time that will pass before personal communications services ("PCS") licensing rules are adopted and such applications are filed and granted, this twelve month notification period will provide existing 2 GHz microwave operators with at least a three year period during which they will not be subject to requests for involuntary relocation. See Comments of Cox at 6 n.6.

licensees be permitted to request 2 GHz fixed licensee relocation upon authorization to construct their systems.

Given the ample protections afforded incumbents under the Commission's adopted rules, a transition period of any length cannot be justified.<sup>3/</sup> The transition period concept was part of the Commission's original emerging technologies spectrum initiative that included affording co-primary status and corresponding interference protection to incumbent microwave operators during a ten year transition period.<sup>4/</sup> Under this proposal, most incumbent microwave licensees' operations were to be reduced to secondary status after ten years.<sup>5/</sup> Because the rules have been revised to provide indefinite co-primary status for all incumbent microwave licensees, and guarantee that these licensees will not be adversely affected by the implementation of emerging technologies, the need for any transition period has vanished.<sup>6/</sup>

Cox stated in its comments that, "[i]n light of the strong protections the Commission already has fashioned for incumbent microwave users, it is unclear

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3/ The rules provide that all existing 2 GHz fixed microwave licensees will retain co-primary status indefinitely and no microwave licensee will be required to relocate unless comparable facilities can be constructed at new frequencies and unless all costs are paid by the emerging technologies licensee. See Third Notice, 7 FCC Rcd at 6890.

4/ See Notice of Proposed Rulemaking, 7 FCC Rcd 1542, 1545 (1992); See also Comments of Cox at 6.

5/ See Notice of Proposed Rulemaking, 7 FCC Rcd at 1545.

6/ The rules further provide that public safety licensees will be exempt from any involuntary relocation. See Third Notice, 7 FCC Rcd at 6891. Some parties have questioned the scope of this exemption. Obviously, the broader the scope of the exemption, the more difficult it will be for emerging technologies licensees to provide service.

what public purpose would be served by maintaining a mandatory voluntary negotiation period that would only serve to delay the introduction of new services the Commission already determined are in the public interest and will advance the U.S. position of world leadership in developing new mobile technologies."<sup>7/</sup> Cox argued that a three to ten year transition period will either unduly delay the implementation of emerging technologies or will force emerging technologies licensees to acquiesce to unreasonable demands in order to obtain access to desperately needed 2 GHz spectrum.<sup>8/</sup>

Like Cox, many commenters in this proceeding question the wisdom of creating a transition period for these same reasons. American Personal Communications ("APC") stated that "it is difficult to discern a legitimate public interest benefit to be gained by any 'transition period' preventing this well-balanced mechanism [of guaranteed reimbursement for incumbents] from coming into play for a period of years."<sup>9/</sup> Consistent with Cox's arguments, APC further stated that "[t]he only possible advantage of the transition period would be to allow incumbents to receive compensation for moving frequencies during the transition period in excess of their costs -- a windfall to incumbents that, in the end, would be borne by PCS consumers -- and to allow them to build more 2

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7/ Comments of Cox at 5-6 (footnote omitted).

8/ See Comments of Cox at 5.

9/ Comments of APC at 3.

GHz links that might then have to be relocated to new frequencies, also at the public's expense."<sup>10/</sup>

Similarly, Telocator stated that, under the Commission's adopted rules, "a transition period serves no evident purpose other than to provide incumbents a more extended period during which they are in a position to negotiate for their 'early' relocation at a premium cost. Any such delays and resulting increases in the cost of new [emerging technologies] services deployed in the spectrum would clearly be inimical to the public interest."<sup>11/</sup> Pacific Telesis Group ("PacTel") argued that:

A transition period is unnecessary and will only lead to delay in clearing the spectrum bands for use by emerging wireless technologies. Existing users should be required to move as soon as the new technology licensee has contacted them and made the appropriate arrangements for relocation. The rights of the existing microwave users and the vital services they provide will be fully protected by the provision that all relocation expenses be covered by the new licensees.<sup>12/</sup>

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<sup>10/</sup> Comments of APC at 3 n.7.

<sup>11/</sup> Further Comments of Telocator at 7.

<sup>12/</sup> Comments of PacTel at 1. For these and other reasons, many commenters urged the Commission to adopt only the most abbreviated transition period. Personal Communications Network Services of New York, Inc. ("PCNS-NY") stated that a three year transition period is "more than adequate to permit the evolution and development of voluntary negotiations" and that "[a] shorter time frame rather than an extended time frame such as ten years, will bring the parties to the table." Comments of PCNS-NY at 14. APC argued that "[t]he briefest transition period possible -- which appears to be three years -- . . . should be adopted." Comments of APC at 7 (footnote omitted). Telocator stated that, in light of the rules' absolute provisions that incumbent licensees will not ever be forced to move if the relocation will cause technical or economic harm, the Commission should establish the shortest possible time period for purely voluntary relocations. See Comments of Telocator at 7; See also Comments of Omnipoint Communications, Inc. at 1 (Commission should adopt reasonably short transition period given protections afforded incumbents).

These commenters' arguments provide additional support for Cox's claim that the compromise between emerging technologies proponents and incumbent microwave licensees has become lopsided in favor of incumbent 2 GHz licensees. The Commission, however, may easily restore the proper balance by implementing Cox's proposal.

While the aforementioned commenters' arguments demonstrate the real dangers inherent in introducing arbitrary elements of delay into the emerging technologies licensing process, the arguments in favor of a lengthy transition period are highly overblown. Lower Colorado River Authority ("LCRA") and the Association of American Railroads ("AAR"), for example, claimed that "[p]ermitting involuntary relocation too quickly may result in premature dislocation of microwave facilities from spectrum that a PCS entrepreneur may end up never using. . . ." <sup>13/</sup>

Recent studies by Cox and other parties indicate that this claim is not well-founded. Cox commissioned Comsearch to perform an in-depth analysis of available frequencies in the San Diego metropolitan area to illustrate the impact of microwave incumbents on PCS development.<sup>14/</sup> In six important population centers throughout San Diego there is no available spectrum within the bands designated for licensed PCS on a shared, non-interfering basis. Even if the PCS licensees collectively were to relocate all of the non-exempt incumbent microwave

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<sup>13/</sup> Comments of LCRA at 15, Comments of AAR at 14.

<sup>14/</sup> This study was filed with Cox's comments in this docket on January 13, 1993.

licensees, they would only clear 30 to 40 MHz of the 120 MHz of spectrum theoretically available in the 1850-1990 MHz band.<sup>15/</sup>

These studies demonstrate that it will be essential for PCS licensees to gain early access to 2 GHz spectrum to provide service at all. Moreover, because the PCS licensee must pay all relocation costs of the incumbent, it is highly unlikely that a PCS licensee will request spectrum that it will never use.

Idaho Power Company argued that a fifteen year transition period is appropriate because microwave licensees replace their microwave equipment on a fifteen year cycle.<sup>16/</sup> The Commission's rules, however, have fully addressed this concern. According to these rules, microwave licensees will be able to voluntarily negotiate with emerging technologies licensees to recoup any loss in terms of equipment value or, if the microwave licensee is involuntarily relocated, the emerging technology service provider will be required to guarantee payment of all relocation costs, including all engineering, equipment, site and filing fees, as well as any reasonable, additional costs that the relocated licensee may incur as a

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<sup>15/</sup> See Reply Comments of Cox in GEN. Docket No. 90-314 at 6-7; See also APC Study filed with the Commission in November 1992 (finding comparable or worse blockage problems in the eleven largest metropolitan areas in the United States.). Similarly, Comsearch's own study of the 1850-1990 MHz band in San Francisco, Dallas and Washington, D.C. indicates that "[a]llocations of 20 MHz or 30 MHz per PCS licensee provide few spectral alternatives in the event that even a single microwave receiver is located within any portion of the allocated band." See Comsearch, Analysis of the 20 MHz, 30 MHz, & 40 MHz PCS Block Allocations at 1 (GEN. Docket No. 90-314, filed January 8, 1993).

<sup>16/</sup> See Comments of Idaho Power Company; See also Comments of American Gas Association at 3 (arguing that transition period should be as long as possible but at least ten years so that firms that have recently purchased new equipment or systems will have more time to recoup their investment).

result of operation in a different fixed microwave band or migration to other media.<sup>17/</sup>

LCRA and AAR also attempted to justify lengthy transition periods by stating that "at least 10 years is needed to permit marketplace forces to work free from government interference. Sufficient time should be available for real-world business people, not federal regulators, to formulate the most efficient and cost-effective spectrum arrangements."<sup>18/</sup>

This claim, however, has already been controverted by many real-world business people. As stated in its comments, Cox believes that it may negotiate a relocation agreement and relocate incumbent 2 GHz licensees in accordance with Commission rules within a twelve month period.<sup>19/</sup> PCNS-NY, a microwave operator, agrees that "within one year of being granted a PCS license in a metropolitan area [emerging technologies licensees] could relocate existing users to higher frequencies or alternative media."<sup>20/</sup>

It appears, therefore, that a transition period will not be necessary to protect the interests of incumbent microwave users, protect against unnecessary

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<sup>17/</sup> See Third Notice, 7 FCC Rcd at 6890. Southwestern Bell Corporation and GTE Service Corporation also support extremely lengthy transition periods. See Comments of Southwestern Bell Corporation at 5-7 (supports ten year transition period); Comments of GTE Service Corporation at 5 (supports an indefinite transition period or one that is at least ten years). Cox submits that these firms' support of lengthy transition periods is largely a product of their interest in delaying the entry of viable wireless services competition.

<sup>18/</sup> Comments of LCRA at 15, Comments of AAR at 14.

<sup>19/</sup> See Comments of Cox at 7-8.

<sup>20/</sup> Comments of PCNS-NY at 13.

dislocation of incumbents, or allow marketplace forces to operate efficiently. However, if implemented, a transition period, especially a lengthy one, will severely jeopardize the viability of emerging technologies like PCS.

By unreasonably postponing the implementation of PCS, a lengthy transition period will foreclose the possibility that the United States will be a leader in the mass implementation of new wireless technologies.<sup>21/</sup> Moreover, it will send the wrong message to investors -- that the Commission is not fully committed to making spectrum available to new wireless technologies. This, in turn, will undermine efforts to secure the necessary capital to deploy PCS systems at a crucial juncture.<sup>22/</sup> Thus, the dangers inherent in adopting a lengthy transition period are significant.

Cox also notes that Niagara Mohawk Power Corporation, Central and South West, Commonwealth Edison Company, Montana Power Company and Metropolitan Water District of Southern California, Questar Service Corporation and American Petroleum Institute, in their strikingly similar pleadings, suggested that the Commission defer the commencement of the transition period until "the date on which the first actual full-term new technology authorization in that frequency band is granted."<sup>23/</sup> This proposal is patently unreasonable. When

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<sup>21/</sup> See Third Notice, 7 FCC Rcd at 6888 ("[A]ccess to 2 GHz spectrum by emerging technology proponents will promote the ability of American industry to maintain their competitive leadership position in global telecommunications markets.").

<sup>22/</sup> See Comments of APC at 6-7.

<sup>23/</sup> Comments of Niagara Mohawk Power Corporation at 7, Comments of Central and South West at 7, Comments of Commonwealth Edison Company at (continued...)



combined with a three to ten year transition period and an additional one year period of mandatory negotiation,<sup>23/</sup> this proposal will have the chilling effect of delaying the implementation of emerging technologies for decades. Such delays will not benefit incumbent 2 GHz licensees, emerging technologies licensees or the public.

To avoid these unnecessary delaying tactics, Cox suggests that PCS licensees be permitted to request voluntary or involuntary relocation of existing 2 GHz licensees upon authorization of their systems and to require that such relocation be completed within the twelve months following the relocation request.<sup>24/</sup> Cox urges the Commission to implement its recommendations because

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<sup>23/</sup> (...continued)

<sup>7</sup>, Comments of Montana Power Company at 8, Comments of Metropolitan Water District of Southern California at 8, Comments of Questar Service Corporation at 8 and Comments of American Petroleum Institute at 10.

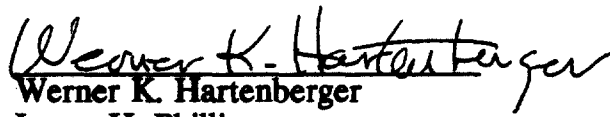
<sup>24/</sup> The Commission has proposed requiring a minimum one year period for voluntary negotiations after grant of a license to an emerging technologies provider in addition to a transition period. See Third Notice, 7 FCC Rcd at 6891. If implemented, this proposal will serve only to postpone further the equitable relocation of certain microwave licensees.

<sup>25/</sup> If a transition period were to be implemented, Cox would support APC's suggestion that the Commission commence the transition period "from the date on which the transition plan was adopted -- that is, September 17, 1992." Comments of APC at 7. As APC stated, "[t]hat is the date on which incumbent microwave licensees effectively were put on notice that involuntary relocation would, in fact, be required." Id. (footnote omitted).

they will provide more than adequate protection to existing 2 GHz licensees while furthering the introduction of emerging technologies.

Respectfully submitted,

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